

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Global Steel Products Corp. :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1977. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 6th day of January, 1983, he served the within notice of Decision by certified mail upon Global Steel Products Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Global Steel Products Corp.  
c/o M. F. Rolla  
One Penn Plaza  
New York, NY 10119

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of January, 1984.

David Parchuck

James A. Haggerty  
pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 6, 1984

Global Steel Products Corp.  
c/o M. F. Rolla  
One Penn Plaza  
New York, NY 10119

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
GLOBAL STEEL PRODUCTS CORP. : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Franchise Tax on Business Corporations :  
under Article 9-A of the Tax Law for the Year :  
1977. :

---

Petitioner, Global Steel Products Corp., 95 Marcus Boulevard, Deer Park, New York 11729, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1977 (File No. 29636).

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1982 at 1:15 P.M., with all briefs to be submitted by January 13, 1983. Petitioner appeared by Ronayne, Hackeling & Rolla, Esqs. (M.F. Rolla, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioner may reduce the deficiency asserted against it for 1977, by carryover of unused investment tax credits which arose in 1974, 1975 and 1976.

FINDINGS OF FACT

1. For the years 1974 and 1975, petitioner, Global Steel Products Corp. ("Global Steel"), filed franchise tax reports and paid the minimum tax of

\$125.00. Petitioner did not submit with the reports any claim for investment tax credit with respect to acquisitions it made in those years.

2. For the year 1976, International Looms, Inc. and its two wholly-owned subsidiaries, Global Steel and Foster Brothers Manufacturing Co. ("Foster Bros."), filed a combined franchise tax report and paid the minimum tax of \$250.00. Appended to the report was a handwritten schedule entitled, "International Looms, Inc. & Subsidiaries, I.T.C. Computation 1976," reflecting the following carryovers and purchases:

	<u>Global Steel</u>	<u>Foster Bros.</u>	<u>Total</u>
Carryover 1974	\$4,873	\$1,626	\$ 6,499
1975	294	1,769	2,063
Purchases 1976	\$21,396	\$76,429	
at 2%	428	1,529	1,957
	<u>\$5,595</u>	<u>\$4,924</u>	<u>\$10,519</u>

Credit not taken - minimum tax paid

The Audit Division disallowed the combined filing, recalculated petitioner's franchise tax liability on an individual basis, and issued to Global Steel a Notice and Demand for Payment of Corporation Tax Due under date April 20, 1978 in the amount of \$6,565.50, plus interest. Petitioner paid the amount demanded without filing an amended return or any claim for offset by an investment credit carryover.

3. (a) For the year 1977, International Looms, Inc. similarly filed a report on a combined basis with petitioner and Foster Bros. The combined report was not offered in evidence. The separate report which petitioner was required to submit, reflecting the minimum tax due, is in evidence; no claim for investment tax credit was included therewith.

(b) On April 4, 1980, the Audit Division issued to petitioner a Notice of Deficiency, asserting additional franchise tax due under Article 9-A of the

Tax Law for 1977 in the amount of \$29,856.00, plus interest. The Audit Division disallowed the combined filing and recomputed petitioner's franchise tax liability on an individual basis, on the ground that the group had not sought the prior leave of the Tax Commission to so file, as required by the regulations.

(c) At a pre-hearing conference, petitioner agreed that an individual report was in order. On or about August 30, 1981, it submitted an amended, individual report, wherein it applied to its business income an allocation factor of 42.75 percent. Petitioner attached to the report a Claim for Investment Tax Credit (form CT-46), seeking credit of \$92.00 upon machinery and equipment acquired in 1977. After petitioner provided substantiation for its claimed business allocation, the Audit Division permitted the allocation, allowed the investment tax credit for qualifying purchases made in 1977, and revised the amount of the asserted deficiency to \$12,256.00.

4. On or about January 29, 1982, petitioner submitted a second amended report, appending the handwritten investment tax credit schedule described in Finding of Fact "2" and offsetting the revised deficiency by \$5,595.00, the credit carryovers from 1974, 1975 and 1976. The Audit Division refused to allow petitioner to avail itself of this offset on the following grounds:

(a) The allowance of an investment tax credit carryforward in section 210.12-A was not added to Article 9-A until 1975, effective as to the acquisition, construction, reconstruction or erection of property on or after January 1, 1976.

(b) Petitioner's claim arising in 1976 was not made on the proper form (CT-46), which shows by its columnar headings the various requirements for allowance of the credit, such as "Itemized Description of Property", "Principal Manufacturing and Productive Use," "Date Acquired," and "Life."

The Audit Division does not otherwise dispute that the property purchased in 1974, 1975 and 1976 satisfies the qualifications set forth in Tax Law section 210.12(b).

CONCLUSIONS OF LAW

A. That section 210.12 of the Tax Law makes available to the corporate taxpayer an investment tax credit with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to section 167 of the Internal Revenue Code, have a useful life of 4 years or longer, are acquired by purchase as defined in section 179(d) of the Code, have a situs in New York and are principally used by the taxpayer in the production of goods by (inter alia) manufacturing, processing, assembling or refining. The credit allowed for any taxable year cannot reduce the tax due for that year to less than the minimum tax fixed by section 210.1(a). If the amount of the credit allowable for the year reduces the tax due to the minimum tax, "any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years." Section 210.12(e). The credit, with its carryover provision, was enacted by Chapter 1072 of the Laws of 1969, applicable to taxable years ending after December 31, 1968. (The carryover provision contained in section 210.12-A pertains to the credit granted by such subdivision, the employment incentive tax credit.)

B. That submission by petitioner of its investment tax credit computation schedule with the 1976 franchise tax report apprised the Audit Division of petitioner's claims for credits arising in 1974, 1975 and 1976. The Audit Division examined petitioner's report for said year and failed to assert any deficiency or even raise any question regarding the credits.

Furthermore, petitioner's second amended return submitted on January 29, 1983 constituted a properly made and timely filed refund claim for 1977. As stated in Matter of Ford Motor Company (State Tax Comm., June 18, 1982), where

a notice of deficiency is issued within the time limitations prescribed by section 1083 of Article 27, and in response the taxpayer timely files a petition, the taxpayer's right to file a claim for refund is thereby suspended. The Tax Commission may determine, however, that the taxpayer has made an overpayment for the year at issue, whether or not it also determines a deficiency for such year. Section 1087(f). Had petitioner herein filed a claim for credit or refund on the date of the mailing of the notice of deficiency, stating as the ground a carryover of investment tax credits arising in 1974, 1975 and 1976, the claim would have been timely under section 1087(b).

Consequently, petitioner is entitled to offset the deficiency asserted on April 4, 1980 by the credit carryover.

C. That the petition of Global Steel Products Corp. is granted to the extent indicated in Conclusion of Law "B"; the Notice of Deficiency issued on April 4, 1980 is to be modified accordingly; and except as so modified, the deficiency is in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 06 1984

*Richard W. Cline*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Smith*  
COMMISSIONER